

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1060 of 2007
IN
Civil Writ Jurisdiction Case No. 5758 of 2004**

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Mohammad Asgar, Son of Nasiruddin, resident of Village Papraul, PS Barauni, PO
Papraul, District Begusarai

.... Petitioner/Appellant

Versus

1. The State of Bihar
2. Director, Secondary Education, Government of Bihar, Patna
3. Regional Deputy Director, Darbhanga
4. District Education Officer, Begusarai
5. Headmaster, Nationalized J K High School, Begusarai

.... Respondents/Respondent

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Appearance :

For the Appellant/s : Mr. Amaresh Kumar Singh
Mr. Mayank Shekhar

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 14-09-2017

Seeking exception to an order passed on 26.07.2006
in CWJC No. 5758 of 2004 this appeal has been filed under Clause
10 of the Letters Patent.

Even though the learned counsel argued that in view
of an order passed by a Full Bench in LPA No.1028 of 2007, LPA
No. 1509 of 2009 and MJC No. 6050 of 2012, petitioners should be
granted the benefit of reinstatement as has been granted to other
employees in various cases by the Full Bench in the aforesaid
judgment, we are of the considered view that the Full Bench



judgment referred to above cannot be applied in the case of the present petitioners for the simple reason that in the Full Bench in which both of us were parties. We were dealing with two cases where an LPA filed by the State and another LPA filed by an employee and we find that 30 employees were appointed after a common selection process. All of them were dismissed on the basis of a Circular issued by the State Government and all of them filed writ petitions. In the case of 28 employees, after the writ petition was allowed, Letters Patent Appeals filed by the State Government were dismissed having been reinstated in service. But it was only in the case of 2 employees who were appellant in LPA No. 1028 of 2007, and respondent in LPA No. 1509 of 2009, after taking note of litigation policy of the State of Bihar relief was granted to those 2 employees in the peculiar facts and circumstances which came on record. We had granted relief to the employees in the Full Bench because of the litigation policy of the State Government and the fact that all the 30 employees should be dealt with in a similar fashion and there cannot be discrimination in the case of 2 employees when prayer is granted to 28 employees.

The said principle cannot be applied in the present case, as in this case, a perusal of the order passed by the Writ Court goes to show that the petitioner's services were terminated on



account of the fact that his appointment was without following any due process of law, no interview was held before his selection and based on an enquiry conducted finding the appointment to be illegal the same was terminated.

The aforesaid action taken by the State Government is in accordance with the law laid down by the Supreme Court in the case of **Secretary, State of Karnataka vs. Uma Devi [(2006) 4 SCC 1]**. We see no reason to make any interference in the matter on this ground. Once in an enquiry conducted it was found that the appointment was made without following any procedural law, without any advertisement and without any selection process being held, no indulgence into the matter is called for. Even though learned counsel invited our attention to certain judgment whereby similar orders passed by the State Government were quashed by the Single Judges of this Court, we are of the considered view that in none of those cases requirement of law laid down in the case of **Uma Devi** (supra) have been considered. On the contrary, the judgments brought on record by the appellant are mostly prior to 2006 and Annexure-1 series are the judgments rendered on 18.07.2003, 18.03.2004, 29.08.2003 and 17.05.2004. These all are judgments prior to the said judgment in the case of **Uma Devi** (supra). Once it has been held in the case of **Uma Devi** (supra) that



an illegal appointment cannot be regularized and when the enquiry report available on record indicates that it is a case of illegal appointment, we see no reason to make any indulgence into the matter.

Finding the submission and contention on behalf of the appellant to be wholly misconceived and unsustainable we dismiss the appeal.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl

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